

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Conor O'Shea	Team: Squad #5	CCRB Case #: 201901982	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/26/2019 1:30 PM, Wednesday, 02/27/2019 3:00 PM	Location of Incident: Bay 50th Street "D" subway station	Precinct: 60	18 Mo. SOL 8/27/2020	EO SOL 4/13/2021	
Date/Time CV Reported Wed, 02/27/2019 3:06 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 03/05/2019 12:39 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Faisal Ejaz	08993	948019	TB DT34
2. POM Filippo Gugliara	06737	953938	TB DT34
3. POM Waqas Shabir	31273	959979	TB DT34
4. POM Kevin Yip	17842	943973	TB DT34

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jonathan Gomez	20766	951776	TB DT34
2. POM Rodney Velez	02125	939836	TB DT34

Officer(s)	Allegation	Investigator Recommendation
A.POM Waqas Shabir	Abuse: On February 26, 2019, Police Officer Waqas Shabir stopped § 87(2)(b)	
B.POM Waqas Shabir	Force: On February 26, 2019, Police Officer Waqas Shabir used physical force against § 87(2)(b)	
C.POM Waqas Shabir	Abuse: On February 26, 2019, Police Officer Waqas Shabir failed to provide § 87(2)(b) with a business card.	
D.POM Waqas Shabir	Abuse: On February 27, 2019, Police Officer Waqas Shabir stopped § 87(2)(b)	
E.POM Faisal Ejaz	Abuse: On February 27, 2019, Police Officer Faisal Ejaz stopped § 87(2)(b)	
F.POM Waqas Shabir	Force: On February 27, 2019, Police Officer Waqas Shabir used physical force against § 87(2)(b)	
G.POM Faisal Ejaz	Force: On February 27, 2019, Police Officer Faisal Ejaz used physical force against § 87(2)(b)	
H.POM Filippo Gugliara	Force: On February 27, 2019, Police Officer Filippo Gugliara used physical force against § 87(2)(b)	
I.POM Kevin Yip	Force: On February 27, 2019, Police Officer Kevin Yip used physical force against § 87(2)(b)	
J.POM Waqas Shabir	Force: On February 27, 2019, Police Officer Waqas Shabir used physical force against § 87(2)(b) § 87(2)(b)	
K.POM Waqas Shabir	Force: On February 27, 2019, Police Officer Waqas Shabir tightly handcuffed § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]

Case Summary

On February 26, 2019, § 87(2)(b) (under the name, § 87(2)(b) § 87(2)(b) called the CCRB and filed a complaint on behalf of her then-§ 87(2)(b)-old son, § 87(2)(b) generating CCRB case #201901754. § 87(2)(b) did not witness this incident. On February 27, 2019, § 87(2)(b) called 911 to file this complaint but hung up before being connected to the IAB Command Center, generating original IAB log #19-7916. § 87(2)(b)'s complaint was received at the CCRB on March 6, 2019, under IAB log #19-8223, and generated this CCRB case, #201901982.

On February 26, 2019, shortly before 1:30 p.m., § 87(2)(b) at the time, a freshman at § 87(2)(b) § 87(2)(b) in Brooklyn—left school early for a doctor's appointment, entered the nearby Bay 50th Street "D" subway station to travel there, and jumped the turnstile. Police Officer Waqas Shabir of Transit District 34 immediately stopped him (**Allegation A: Abuse of Authority**, § 87(2)(g) PO Shabir grabbed § 87(2)(b)'s arm and allegedly shoved him backwards through the emergency exit gate (**Allegation B: Force**, § 87(2)(g) § 87(2)(b) then paid his subway fare and left without incident. PO Shabir failed to provide § 87(2)(b) with a business card (**Allegation C: Abuse of Authority**, § 87(2)(g) No arrest or summons resulted.

On February 27, 2019, at approximately 3:00 p.m., § 87(2)(b) entered the same Bay 50th Street subway station at the end of the school day. § 87(2)(b) swore at PO Shabir as he walked into the station. PO Shabir and his partner, Police Officer Faisal Ejaz, also from Transit District 34, stopped § 87(2)(b) (**Allegations D–E: Abuse of Authority**, § 87(2)(g) § 87(2)(b) began screaming, sat down in the middle of the platform stairs, and refused to move. Police Officer Filippo Gugliara and Police Officer Kevin Yip (who has since been promoted to sergeant), also from Transit District 34, responded as backup. PO Shabir arrested § 87(2)(b) for disorderly conduct. PO Shabir and PO Ejaz grabbed and pulled on § 87(2)(b)'s arms (**Allegations F–G: Force**, § 87(2)(g) PO Yip and PO Gugliara allegedly grabbed § 87(2)(b)'s legs and dragged him down the stairs (**Allegations H–I: Force**, § 87(2)(g) PO Shabir allegedly pushed § 87(2)(b) towards the mezzanine, pushed him onto a bench, and pushed him through the exit gate (**Allegation J: Force**, § 87(2)(g) PO Shabir allegedly tightened § 87(2)(b)'s handcuffs (**Allegation K: Force**, § 87(2)(g) Police Officer Jonathan Gomez and Police Officer Rodney Velez, also from Transit District 34, also responded as backup.

§ 87(2)(g), § 87(4-b)

The investigation obtained surveillance footage of the incident on February 26 from the Bay 50th Street subway station (original footage in a proprietary format is available at **Board Review 01**; relevant subclips are available at **Board Review 02-03** and summarized at **Board Review 04-05**). The investigation obtained BWC footage of the incident on February 27 (**Board Review 06–11**, summarized at **Board Review 12–17**). The investigation also obtained a cell phone video that § 87(2)(b) recorded the day after the second incident, depicting PO Shabir and PO Ejaz (**Board Review 18**). All references to video evidence in this report refer to the time stamp in the video player, not the on-screen clock embedded in the video footage itself.

On December 13, 2019, the CCRB created spin-off case #201910704 and referred it to IAB to address the officers' fare enforcement practices.

Findings and Recommendations

Allegation A—Abuse of Authority: On February 26, 2019, Police Officer Waqas Shabir stopped § 87(2)(b)

It is undisputed that § 87(2)(b) passed through the turnstiles without paying his fare and without permission or authority to do so. PO Shabir immediately stopped him.

A police officer may stop a civilian provided that the officer has reasonable suspicion that the civilian has committed a crime. *People v. DeBour*, 40 N.Y.2d 210 (1976) (**Board Review 19**). In New York State, a person is guilty of misdemeanor theft of services when: “[w]ith intent to obtain...subway...service without payment of the lawful charge therefor, or to avoid payment of the lawful charge for such transportation service which has been rendered to him, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by force, intimidation, deception, or mechanical tampering, or by unjustifiable failure or refusal to pay.” NY Penal Law, § 165.15 (**Board Review 20**).

PO Shabir was justified in stopping § 87(2)(b) because he observed him commit a crime. § 87(2)(g)

Allegation B—Abuse of Authority: On February 26, 2019, Police Officer Waqas Shabir used physical force against § 87(2)(b)

§ 87(2)(b) (**Board Review 21**) testified that when PO Shabir stopped him, PO Shabir grabbed his bicep, pushed him up against the emergency exit door, and then pushed him away and out through the door. This caused § 87(2)(b) to stumble but he did not fall down.

A subclip of surveillance video from the Bay 50th Street subway station (**Board Review 02**) captures the incident. The video begins as § 87(2)(b) and a friend enter the station. At 00:26, § 87(2)(b) jumps the turnstile. PO Shabir immediately stops him and escorts him through the exit gate. PO Shabir does not push § 87(2)(b) does not stumble on the other side.

PO Shabir (**Board Review 22**) provided testimony consistent with the surveillance footage. He grabbed § 87(2)(b)'s elbow with one hand and escorted him out through the emergency exit door. § 87(2)(b) walked through the door; PO Shabir did not push him through it.

The MTA surveillance footage contradicts § 87(2)(b)'s testimony that PO Shabir forcibly pushed him out of the paid side of the mezzanine, and instead corroborates PO Shabir's testimony to the contrary. § 87(2)(g)

Allegation C—Abuse of Authority: On February 26, 2019, Police Officer Waqas Shabir failed to provide § 87(2)(b) with a business card.

It is undisputed that § 87(2)(b) requested—and PO Shabir verbally provided—PO Shabir's name, rank, shield number, and command.

PO Shabir testified (**Board Review 23**) that, aside from not having any business cards on his person during his tour that day, he had no other reason for not providing § 87(2)(b) with a business card.

NYC Administrative Code 14-174 (**Board Review 24**) requires that police officers provide a business card to someone they stop but do not arrest or issue a summons. If the officer does not have enough cards, he must verbally provide his name, rank, shield number, and command, and allow sufficient time to note this information.

PO Shabir complied with the RTKA, in the absence of business cards, by verbally identifying himself. § 87(2)(g)

Allegation D—Abuse of Authority: On February 27, 2019, Police Officer Waqas Shabir stopped § 87(2)(b)

Allegation E—Abuse of Authority: On February 27, 2019, Police Officer Faisal Ejaz stopped § 87(2)(b)

It is undisputed that PO Shabir and PO Ejaz propped the exit gate open, as they did at the end of every school day, to accommodate the large influx of commuting students. They permitted everyone at the station to enter through the exit gate without paying a fare. § 87(2)(b) and dozens of other individuals did so with the police’s permission. PO Shabir and PO Ejaz immediately stopped § 87(2)(b) on the stairs up to the platform. PO Shabir arrested § 87(2)(b) for disorderly conduct based on his subsequent behavior on the stairs.

PO Shabir (**Board Review 22**) testified that § 87(2)(b) entered the subway station and loudly said, “Fuck you, motherfucker” to him. PO Shabir pursued § 87(2)(b) and ordered him to pay his fare. When asked in his CCRB interview why § 87(2)(b) had to pay his fare—if everyone else could walk through the gate without doing so—PO Shabir said, “You have to be courteous. I used my discretion to—for crowd control. And you are not, you are not, you are not showing me respect.” After § 87(2)(b) swore at PO Shabir, the only thing that PO Shabir suspected § 87(2)(b) of doing that was unlawful was that he needed to pay his subway fare. PO Ejaz’s testimony (**Board Review 25**) was generally consistent with PO Shabir’s.

PO Shabir’s BWC video (**Board Review 06**) depicts the entire incident. At 00:12, § 87(2)(b) enters the subway station through the propped-open gate along with dozens of other individuals. As § 87(2)(b) walks past PO Shabir and towards the subway platform, he smiles and appears to say something to PO Shabir without breaking stride. There is no audio at this point in the footage. He does not make any physical gestures or movements towards PO Shabir. Although the subway station was already crowded before § 87(2)(b) entered, pedestrian traffic appears to continue uninterrupted.

A police officer may stop a civilian provided that the officer has reasonable suspicion that the civilian has committed a crime. *People v. DeBour*, 40 N.Y.2d 210 (1976) (**Board Review 19**). In New York State, a person is guilty of misdemeanor theft of services when: “[w]ith intent to obtain...subway...service without payment of the lawful charge therefor, or to avoid payment of the lawful charge for such transportation service which has been rendered to him, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor *by force, intimidation, deception, or mechanical tampering, or by unjustifiable failure or refusal to pay.*” NY Penal Law, § 165.15 (emphasis added) (**Board Review 20**). The *MTA Rules of Conduct*, § 1050.4(a) (**Board Review 26**) prohibits, in relevant part, entering or using an MTA facility by “proceed[ing] in any other *unauthorized manner* through an exit gate or through or past any other point at which a fare is required or collected” (emphasis added).

In New York State, a person is guilty of the non-criminal violation of disorderly conduct, when: “with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof: (1) He engages in fighting or in violent, tumultuous or threatening behavior; or (2) He makes unreasonable noise; or (3) In a public place, he uses abusive or obscene language, or makes an obscene gestures; or (4) Without lawful authority, he disturbs any lawful assembly or meeting of persons; or (5) He obstructs vehicular or pedestrian traffic; or (6) He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or (7) He creates a hazardous or physically offensive condition by an act which serves no legitimate purpose.” NY Penal Law, § 240.20 (**Board Review 27**).

“[P]rovocative and challenging” speech “is nevertheless protected against censorship or punishment, unless” it rises to the level of punishable ‘fighting words,’ which are “likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.” *Terminiello v. Chicago*, 337 U.S. 1 (1949) (**Board Review**

28). Speech that does *not* rise to the level of fighting words, made “while in retreat and unaccompanied by any actions that would suggest a threat of immediate violence,” “cannot be the basis for a legitimate arrest” under New York State’s disorderly conduct statute. Posr v. Court Officer Shield #207, 180 F.3d 409 (2d Cir. 1999) (**Board Review 29**). “Isolated statements using coarse language to criticize the actions of a police officer, unaccompanied by provocative acts or other aggravating circumstances, will rarely afford a sufficient basis to infer the presence of the ‘public harm’ mens rea necessary to support a disorderly conduct charge” in New York State. People v. Baker, 20 N.Y.3d 354 (2013) (**Board Review 30**).

§ 87(2)(b) did not do anything unlawful before PO Shabir and PO Ejaz stopped him. He did not commit misdemeanor theft of services because he did not enter the station “by force, intimidation, deception, or mechanical tampering, or by unjustifiable failure or refusal to pay.” Nor did he violate § 1050.4(a) of the MTA Rules of Conduct, because he did not enter the station in an “unauthorized manner.” § 87(2)(b)’s single statement to PO Shabir, although crass, did not rise to the level of unprotected “fighting words” under Terminiello. Under Posr and Baker, the fact that § 87(2)(b) made this statement while walking away from PO Shabir and without any accompanying physical actions or aggravating circumstances means that he did not commit disorderly conduct as defined in the New York State Penal Law.

§ 87(2)(b), § 87(2)(g)

Allegation F—Force: On February 27, 2019, Police Officer Waqas Shabir used physical force against § 87(2)(b)

Allegation G—Force: On February 27, 2019, Police Officer Faisal Ejaz used physical force against § 87(2)(b)

The following facts are undisputed. After PO Shabir and PO Ejaz pursued § 87(2)(b) through the mezzanine, they stopped him partway up the stairs leading to the platform. PO Shabir grabbed § 87(2)(b)’s arm. § 87(2)(b) began screaming and called 911, saying that an officer had tried to drag him down the stairs. PO Shabir and PO Ejaz repeatedly told § 87(2)(b) to get off the stairs, but he refused to do so and physically resisted their attempts to get him off the stairs.

BWC footage from PO Shabir (**Board Review 06**) captures the entire incident, beginning at 00:11. § 87(2)(b) screams loudly, calls 911, and tells PO Shabir, “You better get away from me.” PO Shabir orders § 87(2)(b) to “walk out.” PO Ejaz orders him to leave as well. As PO Shabir tries to grab § 87(2)(b) he screams not to touch him and moves further up the stairs. A crowd of people begins to gather atop the stairs and at the bottom of the stairs as well. BWC footage from PO Yip (**Board Review 09**), beginning at 01:38, shows that PO Ejaz and PO Shabir issue § 87(2)(b) verbal commands to get off the stairs. He refuses to comply and yells at them. § 87(2)(b) then begins to flail his arms and legs as PO Shabir and PO Ejaz grab his arms. § 87(2)(b) kicks PO Shabir in the leg. § 87(2)(b) leans his bodyweight backwards, towards the stairs and away from the officers, and repeatedly tries to sit down. The officers do not drag § 87(2)(b) down the stairs.

NYPD Patrol Guide Procedure 221-01 (**Board Review 31**) authorizes force “when it is reasonable to ensure the safety of a member of service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances.”

The minimal force PO Shabir and PO Ejaz used was reasonable, given § 87(2)(b)’s verbal and physical aggression and resistance. § 87(2)(g)

Allegation H—Force: On February 27, 2019, Police Officer Filippo Gugliara used physical force against § 87(2)(b)

Allegation I—Force: On February 27, 2019, Police Officer Kevin Yip used physical force against § 87(2)(b)

Allegation J—Force: On February 27, 2019, Police Officer Waqas Shabir used physical force against § 87(2)(b)

§ 87(2)(b) (Board Review 21) testified that while PO Shabir and PO Ejaz held each of his arms, PO Gugliara and PO Yip grabbed his legs, lifted him off the ground, and dragged him down three-fourths of the distance from where PO Shabir stopped him to the bottom of the stairs, causing his buttocks to hit each step along the way. § 87(2)(b) walked the remaining one-fourth of the stairs. After § 87(2)(b) dismounted the stairs, PO Shabir repeatedly pushed § 87(2)(b) while holding his arm, causing him to stumble but not fall down. In the mezzanine, PO Shabir pushed § 87(2)(b) onto a bench before handcuffing him. PO Shabir also pushed him through the exit door.

PO Shabir (Board Review 22) and PO Ejaz (Board Review 25) denied that any other officers physically assisted them with getting § 87(2)(b) off of the stairs. They denied dragging him down the stairs. Instead, § 87(2)(b) walked downstairs on his own as they escorted him.

As described above, BWC footage from PO Shabir (Board Review 06) and PO Yip (Board Review 09) shows that only PO Shabir and PO Ejaz made physical contact with § 87(2)(b) as he descended the stairs. The footage also shows that they did not drag § 87(2)(b) down the stairs; his body remained low to the stairs because he leaned away from the officers while physically resisting arrest. Beginning at 03:21 in PO Shabir's BWC footage (Board Review 06), the video shows that PO Shabir did not push § 87(2)(b) into the mezzanine; he escorted him while holding his arm. Furthermore, PO Shabir did not push § 87(2)(b) down onto the bench; § 87(2)(b) sat down of his own accord. PO Shabir then escorted § 87(2)(b) through the exit gate without pushing him.

The BWC footage is more consistent with the officers' testimony than § 87(2)(b)'s, and shows that no officer dragged § 87(2)(b) down the stairs by his legs. The BWC footage also shows that PO Shabir did not repeatedly push § 87(2)(b) into the mezzanine, did not push him onto the bench, and did not push him through the emergency exit gate. § 87(2)(g)

Allegation K—Force: On February 27, 2019, Police Officer Waqas Shabir tightly handcuffed § 87(2)(b)

§ 87(2)(b) (Board Review 21) recounted that when he reached his rear-cuffed hands from behind his back towards his front jacket pocket as PO Shabir escorted him outside the subway station, PO Shabir pulled his hands back behind his back and further tightened the handcuffs.

The investigation obtained photographs (Board Review 32–34) that § 87(2)(b)'s mother took of his wrists approximately two hours after the incident. Although § 87(2)(b)'s mother provided them to the CCRB purportedly because they depicted injuries sustained during the incident, it is unclear whether and to what extent they do so. Insofar as they do so, any such injuries are minor and consistent with normal handcuffing.

PO Shabir (Board Review 22) denied tightening § 87(2)(b)'s handcuffs. § 87(2)(b) never complained about them to PO Shabir. PO Ejaz (Board Review 25) testified that § 87(2)(b) complained the handcuffs were too tight before—not after—they exited the subway station. PO Ejaz did not remember whether PO Shabir tightened § 87(2)(b)'s handcuffs as they walked outside.

PO Gugliara's BWC footage (**Board Review 08**), beginning at 07:11, shows PO Shabir escorting § 87(2)(b) out of the mezzanine area and captures almost all of the time it takes for PO Shabir to escort him out of the station. PO Shabir continuously holds § 87(2)(b) at or around his elbow, and does not reach his hand down to the handcuffs or pull § 87(2)(b)'s hands back. When § 87(2)(b) says PO Shabir is hurting him, PO Shabir is not touching § 87(2)(b)'s handcuffs.

PO Shabir's BWC footage (**Board Review 06**) also captures the entire incident. At 08:01, the officers begin to lead § 87(2)(b) out of the station and lodge him in a patrol car on the street. At no point in the interim is the sound of handcuffs tightening audible. There is no visual or audible indication in the footage that PO Shabir ever pulled § 87(2)(b)'s hands further behind his back or tightened the handcuffs.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- Aside from a duplicate complaint of this incident, this is the first and only CCRB complaint in which § 87(2)(b) has been a party (**Board Review 38**).
- PO Shabir has been a member of service for four years and has been named a subject in one other CCRB complaint and two other allegations, neither of which was substantiated. § 87(2)(g)
- PO Ejaz has been a member of service for 11 years and has been named a subject in two other CCRB complaints and two other allegations, neither of which was substantiated. § 87(2)(g)
- PO Gugliara has been a member of service for seven years and has been named a subject in one other CCRB complaint and one other allegation, which was not substantiated. § 87(2)(g)
- PO Yip has been a member of service for 13 years and has been named a subject officer in one other CCRB complaint and two other allegations, which were not substantiated. § 87(2)(g)

CCRB Case # 201901982

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of February 20, 2020, the NYC Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (**Board Review 39**).
- § 87(2)(b) [REDACTED]
[REDACTED]

Squad No.: #05

Investigator: DG IM Giansante for Inv. O'Shea April 8, 2020
Signature Print Title & Name Date

Squad Leader: Daniel Giansante IM Daniel Giansante April 8, 2020
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date